

Rural Housing Service, USDA

§ 3560.405

in any promissory notes, assumption agreements, or reamortization agreements related to the borrower's account.

(2) Late fees are a borrower expense and must not be paid from housing project funds.

(3) The Agency may waive late fees for circumstances beyond a borrower's control and when a waiver is determined by the Agency to be in the best financial interest of the Federal Government.

(d) *Interest on unpaid overdue principal.* On the first day of the month following a payment due date, the Agency will charge interest at the note rate on any unpaid principal payment due according to the loan's amortization schedule (*i.e.*, interest will be charged on delinquent principal). The interest charged on the unpaid principal payment due will be charged to the borrower in addition to the scheduled interest due on payments according to the loan's amortization schedule.

§ 3560.404 Final loan payments.

(a) *Payoff statements.* At the borrower's request, the Agency will provide a statement indicating the pay off amount necessary to pay the borrower's account in full.

(b) *Final payments.* A borrower's final loan payment must include repayment of all outstanding obligations to the Agency.

(1) Any supervised funds being held by the Agency will be applied to the borrower's account or, at the borrower's option, will be returned to the borrower following acceptance of final payment on all outstanding obligations.

(2) If a balance due remains on a borrower's account after Agency acceptance of a final payment, due to borrower error or fraud or Agency error, the Agency will initiate collection action in accordance with the unauthorized assistance collection procedures described in subpart O of this part.

(c) *Final payment loans.* Borrowers with loans for which the Agency approved an amortization period that exceeded the term of the loan may request a loan to finance the final payment in accordance with the requirements of § 3560.74.

(d) *Loan prepayment requests.* If prepayment of an Agency loan is requested, the applicable preservation requirements of subpart N of this part, including the execution of any appropriate restrictive-use agreements, must be met prior to the Agency's acceptance of a final loan payment under the prepayment request.

(e) *Payment forms.* Final payments may be made by cashier's check, certified check, money order, bank draft, or other withdrawal instruments approved by the Agency.

(1) If borrowers use forms of payment requiring special handling, the borrower is responsible for the cost of the special handling.

(2) When payment is provided in a form that is not the equivalent of cash, the Agency will consider the payment to be received at the time the payment has been converted to cash and funds have been transferred to the Agency.

(f) *Release of security instruments.* The Agency will release security instruments, subject to applicable restrictive-use agreements referenced in subpart N of this part, when full payment of all outstanding obligations to the Agency has been received, accepted, and the funds have been transferred to the Agency.

(1) If the Agency and the borrower agree to settle an account for less than the full amount owed, the Agency will release security instruments when the borrower has paid in full all agreed upon obligations.

(2) Recording costs for the release of the security instruments will be the responsibility of the borrower, except where state law requires the mortgagee to record or file the satisfaction.

(g) *Special circumstances—Refund of entire principal.* If the entire principal of the loan is refunded after the loan is closed, the borrower must pay interest from the date of the note to the date of receipt of the refund.

§ 3560.405 Borrower organizational structure or ownership interest changes.

(a) *General.* The requirements of this section apply to changes in a borrower entity's organizational structure or to

§ 3560.406

7 CFR Ch. XXXV (1-1-06 Edition)

a change in a borrower entity's controlling interest. If 100 percent of a borrower entity's ownership interest is transferred, within a 12-month period, the change will be considered a housing project transfer and the provisions of § 3560.406, which covers transfers or sales of housing projects, will apply.

(b) *Agency requirements.* Borrowers must notify the Agency prior to the implementation of any changes in a borrower entity's organizational structure. The Agency must give its consent prior to the implementation of changes in a borrower entity's controlling interest.

(1) Borrowers must submit written requests for Agency consent to the Agency at least 45 days prior to the anticipated effective date of the proposed organizational change. The request must document that the proposed changes will not adversely affect the program purposes or security interest of the Agency and will not adversely affect tenants.

(2) If the controlling interest change involves a transfer of interest to an entity not previously holding an ownership interest in the borrower entity, the request for consent must include a written certification, executed by the party receiving the ownership interest, certifying that the recipient of the ownership interest agrees to assume responsibilities and obligations required of a borrower as established in Agency program requirements including requirements in the promissory note, loan agreement, or other document related to Agency loans held by the borrower entity.

(3) The Agency will not take a consent request for a controlling interest change under consideration if the borrower's request fails to meet the requirements specified in paragraph (b)(2) of this section.

(c) *Documentation of organizational structures and ownership interest.* Borrowers must annually document their organizational structure and ownership.

(1) Documentation must be submitted with the annual financial reports required by § 3560.308 and must reflect any changes made during the 12-month period preceding the submission of the annual financial reports.

(2) If no changes in a borrower entity's organizational structure or ownership were made during the 12-month period prior to submission of the annual financial reports, borrowers are not required to submit documentation, but must submit a statement certifying that no changes have been made in the documents on file with the Agency.

(3) Organizational structure and ownership documentation must include the following items:

(i) A current organization description reflecting all approved changes in the organizational structure of the borrower entity and listing the names, addresses, and tax identification numbers of all parties with an ownership interest in the borrower entity; and

(ii) A written statement by the borrower certifying that the changes in the borrower entity's organizational structure or ownership interests were completed in compliance with state and local laws and in accordance with organizational requirements of the borrower entity.

§ 3560.406 MFH ownership transfers or sales.

(a) *General.* The provisions of this section apply to ownership transfers or sales (e.g., title transfers) involving an Agency financed housing project. The provisions cover situations where Agency loans are being assumed as a part of a housing project transfer or sale.

(b) *Agency consent requirements.* Agency consent must be obtained prior to an ownership transfer or sale and Agency consent will only be given when the transfer or sale is in the best interest of the Federal Government. Any ownership transfer or sale without the consent of the Agency will be considered a default and will be handled in accordance with subpart J of this part.

(1) Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the borrower that was caused by circumstances beyond the borrower's control.

(2) Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency